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HOUSE BILL NO. 1224**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 2, 2022)

(Patron Prior to Substitute—Delegate Bulova)

A BILL to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management; proprietary best management practices.

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater

60 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where
61 coverage has been issued under the Board's General Permit for Discharges of Stormwater from
62 Construction Activities to a state agency or federal entity for which it has approved annual standards
63 and specifications. After establishment, such fees may be modified in the future through regulatory
64 actions.

65 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to
66 a project site that was necessary to check on the status of project site items noted to be in
67 noncompliance and documented as such on a prior project inspection.

68 e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP
69 authority portion of the statewide permit fee for coverage under the General Permit for Discharges of
70 Stormwater from Construction Activities for small construction activity involving a single family
71 detached residential structure with a site or area, within or outside a common plan of development or
72 sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP
73 authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than
74 one acre within a common plan of development or sale.

75 f. When any fees are collected pursuant to this section by credit cards, business transaction costs
76 associated with processing such payments may be additionally assessed;

77 6. Establish statewide standards for stormwater management from land-disturbing activities of one
78 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the
79 permit of a comprehensive approach to addressing stormwater management and erosion and sediment
80 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et
81 seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an
82 area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay
83 Preservation Area Designation and Management Regulations;

84 7. Establish a procedure by which a stormwater management plan that is approved for a residential,
85 commercial, or industrial subdivision shall govern the development of the individual parcels, including
86 those parcels developed under subsequent owners;

87 8. Notwithstanding the provisions of subdivision 5, establish a procedure by which neither a
88 registration statement nor payment of the Department's portion of the statewide permit fee established
89 pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of
90 Stormwater from Construction Activities for construction activity involving a single-family detached
91 residential structure, within or outside a common plan of development or sale;

92 9. Provide for the *certification* and use of a proprietary best management practice only if another
93 state, regional, or national ~~certification~~ program has verified ~~and certified~~ its nutrient or sediment
94 removal effectiveness *and all of such program's established test protocol requirements were met or*
95 *exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this*
96 *subdivision, "certification" means a determination by the Department that a proprietary best*
97 *management practice is approved for use in accordance with this article;*

98 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
99 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
100 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
101 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.
102 Except where more stringent requirements are necessary to address total maximum daily load
103 requirements or to protect exceptional state waters, any land-disturbing activity that provides for
104 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)
105 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
106 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable
107 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less
108 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved
109 through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff
110 volume from the site when it was in a good forested condition divided by the runoff volume from the
111 site in its proposed condition, and shall be exempt from any flow rate capacity and velocity
112 requirements for natural or man-made channels as defined in any regulations promulgated pursuant to
113 this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

114 11. Encourage low-impact development designs, regional and watershed approaches, and
115 nonstructural means for controlling stormwater;

116 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
117 protect state waters and the public health and to minimize the direct discharge of pollutants into state
118 waters;

119 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer
120 administration of the VSMP to the Department;

121 14. Establish a statewide permit fee schedule for stormwater management related to municipal

separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake

183 Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

184 a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an
185 online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit
186 in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However,
187 whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by
188 the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia
189 Stormwater Management Fund, with the balance going to the VESMP authority;

190 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made
191 to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level
192 sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under
193 this article and local ordinances or standards and specifications where applicable. When establishing a
194 VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have
195 the authority to reduce or increase such fees, and to consolidate such fees with other program-related
196 charges, but in no case shall such fee changes affect the amount established in the regulations as
197 available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's
198 portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and
199 associated ordinances;

200 c. In establishing the fee schedule under this subdivision, the Department shall ensure that the
201 VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of
202 Stormwater from Construction Activities for small construction activity involving a single-family
203 detached residential structure with a site or area, within or outside a common plan of development or
204 sale, that is equal to or greater than one acre but less than five acres shall be no greater than the
205 VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of
206 less than one acre within a common plan of development or sale;

207 d. When any fees are collected pursuant to this section by credit cards, business transaction costs
208 associated with processing such payments may be additionally assessed;

209 e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither
210 a registration statement nor payment of the Department's portion of the statewide fee established
211 pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of
212 Stormwater from Construction Activities for construction activity involving a single-family detached
213 residential structure, within or outside a common plan of development or sale;

214 10. Establish statewide standards for soil erosion control and stormwater management from
215 land-disturbing activities;

216 11. Establish a procedure by which a soil erosion control and stormwater management plan or
217 stormwater management plan that is approved for a residential, commercial, or industrial subdivision
218 shall govern the development of the individual parcels, including those parcels developed under
219 subsequent owners;

220 12. Provide for the *certification and* use of a proprietary best management practice only if another
221 state, regional, or national ~~certification~~ program has verified ~~and certified~~ its nutrient or sediment
222 removal effectiveness *and all of such program's established test protocol requirements were met or*
223 *exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this*
224 *subdivision, "certification" means a determination by the Department that a proprietary best*
225 *management practice is approved for use in accordance with this article;*

226 13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that
227 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
228 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
229 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

230 a. Except where more stringent requirements are necessary to address total maximum daily load
231 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
232 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
233 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
234 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
235 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
236 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
237 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
238 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
239 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
240 from the site when it was in a good forested condition divided by the runoff volume from the site in its
241 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
242 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
243 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to
244 § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

2. That the Department of Environmental Quality shall prioritize review of any proprietary best management practice (BMP) that was on the Virginia Stormwater BMP Clearinghouse prior to December 31, 2021, and that submits documentation that another state, regional, or national program has verified its nutrient or sediment removal effectiveness and that it met or exceeded all of such program's established test protocol requirements.